IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.680 OF 1990

Municipal Corporation of Greater Bombay,
a Corporation constituted under
the Bombay Act III of 1988, having its
Office at Mahapalika Marg, Bombay ..Appellant
(Orig.Respondent)

Versus

Steel Suppliers Private Ltd.Bombay
a Company registered under the companies
Act, having its office at 1, Quay Street,
Darukhana, Mazgaon, Bombay-400 010 ..Respondent
(Orig.Appellant)

Mr.R.T. Walawalkar with J.J.Xavier for the Appellant
None for Respondent

CORAM : S.R. SATHE,J.
DATED : 14/08/2007

ORAL JUDGEMENT :-

1. The Municipal Corporation of Greater Bombay-Original Respondent in Municipal Appeal No.247 of 1985 has preferred this appeal against the judgement and order passed by the Court of Additional Chief Judge, Small Causes Court, Bombay whereby the order of Investigating officer fixing the ratebale value of the present Respondent's property at Rs.1,89,660/- was set aside and the rateable value was fixed at the previous ratable value i.e. Rs.42,605/-. For the sake of convenience hereafter the parties shall be referred to as 'Steel Supply Company' and 'BMC'.

2. The brief facts giving rise to this appeal are as under :-

Steel Supply Company purchased the property in question from the official liquidators in the Court auction in 1980 for Rs.20 lakhs. The property consists of a structure consisting of ground plus two upper floors and two shades. The total area of the property in question is 16,383 sq. yards. It is located in the heavy industrial zone. After purchase of the said property Steel Supply Company was having their factory in the said property. However, due to some difficulty they were required to close the said factory. They, therefore, gave some portion of the said property i.e. two shades and portion of about 22500 sq.feet to Oil and Natural Gas Commission on leave and license basis at monthly license fee of Rs.49,307/-.

3. When the entire property was being occupied by Steel Company, BMC had fixed the ratable value of the said property at Rs.41,595/-. However, when BMC came to know about the property given to ONGC by the Steel Company, Deputy Superintendent BMC visited the suit property and after necessary inquiry proposed the revision of ratable value of the suit property to the tune of Rs.3,44,995/-. Being aggrieved by the same, Steel Company filed complaint to BMC. After hearing Steel Company, Investigating Officer of BMC fixed the

ratable value of the entire suit property i.e. portion in occupation of ONGC and portion in occupation of Steel Company at Rs.1,89,660/-. Being dissatisfied with the above mentioned ratable value, Steel Company filed Municipal Appeal No.247 of 1985 in the Court of Small Causes at Bombay. In order to show that the ratable value fixed by the Investigating Officer of BMC is exorbitant, unreasonable and illegal. On behalf of the Steel Company one Arun Agarwal was examined. As against this, BMC examined their Deputy Superintendent J.R. Tamhane. After considering evidence adduced by both the parties the learned Additional Chief Judge, Small Causes Court Bombay came to the conclusion that the previous ratable value was Rs.41,595/-. Even after the time some portion of the suit property was given to the ONGC as licensee, there were no additions or changes in the structure and merely because Steel Company started getting rent/license fee of Rs.49,307/- per month, it can not be said that BMC is entitled to consider the said amount while fixing the ratable value of the property. Learned Additional Chief Judge held that as the earlier ratable value was fixed at Rs.41,595/- the same is to be treated as the fair rent and the investigating officer wrongly fixed the ratable value at Rs.1,89,660/-. He, therefore, set aside the said

ratable value and fixed the same at Rs.42,605/-.

4. Being aggrieved by the above mentioned order BMC has filed the present appeal.

5. In this appeal before me, Shri Walawalkar, learned Advocate for BMC has urged 3 points. Firstly, he submitted that the learned Additional Chief Judge, Small Causes Court has failed to consider the fact that the building in question was previously occupied by the owner and for the first time in the year 1981 some major portion of it was let out or given to ONGC on license basis. So, while determining fair rent this factor ought to have been considered by the learned Judge. Secondly, he canvassed before me that learned Trial Judge also failed to consider that after property was given to ONGC, there was change in the nature of use of the property. He further submitted that as the Steel Company started getting Rs.49,307/- per month, Corporation was justified in taking into consideration the additional benefit that was received by the Steel Company. In order to substantiate his proposition, he has placed reliance on a case **Motichand Hirachand and others V/s. Bombay Municipal Corporation AIR 1968 Supreme Court 441** wherein the ratable value fixed

earlier by the Corporation for the building was increased when it was noticed that landlord had allowed some one to display advertisement on the terrace of the building and started getting extra income out of the same. When the landlord made grievance for the increased ratable value, the Apex Court held that under the circumstances of the said case, the Corporation is entitled to increase the ratable value on the basis of the special added advantage to the said building and income derived from the same by the owner. Lastly, he submitted that the learned Trial Judge ought to have taken into consideration the entire evidence on record and should have fixed the ratable value at Rs.1,89,660/-. He, therefore, submitted that the appeal be allowed and the order passed by the learned Additional Chief Judge, Small Causes Court, Bombay be set aside. As against this, none remained present on behalf of the Respondent.

6. In order to determine as to whether the ratable value which was fixed by the Corporation was correct, it is first necessary to examine the relevant provision under which the ratable value is fixed. For that purpose, one has to see what section 154 of the Mumbai Municipal Corporation Act, 1988 (hereinafter called as the said Act) says. It runs as follows :-

> ***"154. Ratable value how to be determined- (1) In order to fix the ratable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.***
> ***(2) The value of any machinery contained or situate in or upon any building or land shall not be included in the rateable value of such building or land.***
> ***{(3) Notwithstanding anything contained in this section, the rateable value in the case of a building-***
> ***(a) owned by or belonging to the Government or the Bombay Housing Board constituted under the Bombay Housing Board Act, 1948, or other similar body constituted by any law for the time being in force for the purpose of providing housing accommodation;***
> ***(b) constructed, purchased or occupied on or after the 1st day of April 1947 as part of a recognized scheme of subsidised housing for industrial workers or persons belonging to lower income groups or poorer classes ; and***
> ***(c) Comprising in part or in whole of tenements let out to such workers or***

> ***persons on a monthly rent, inclusive of all service and other charges not exceeding rupees thirty-two and fifty naye paise for each such tenement shall be fixed -***
> ***(i) with respect to such tenements comprised therein, with retrospective effect from the date of their construction, purchase or occupation as stated in clause(b), on the actual rent charged for such tenements and not on the rent, for which such tenements might reasonably be expected to let from year to year less a deduction of ten per centum of the said annual actual rent in lieu of all allowances for repairs or on any other account whatsoever, and***
> ***(ii) with respect to the remaining portions, if any, of such building, on the basis of the provisions of sub-sections (1) and (2).”***

From the above provision, it is clear that the assessing authority, for the purpose of fixing the ratable value has to determine the annual rent i.e. the actual rent for which such building might reasonably be expected to let from year to year and to deduct 10% statutory allowances therefrom and arrive at the net ratable value which would be equivalent to the net annual rent. The ratable value is thus taken to be the same as net annual rent of the property. It is also well settled that the principles in fixing that, both gross value and net annual value are estimated by reference to the rent at which the property might reasonably be expected to let from year to year. Various methods of valuation are applied in order to

arrive at such hypothetical rent. For instance, by reference to the actual rent paid for the property or for other comparable property or where there are no rents by reference to the assessment of the comparable property or to the profits earned from the property or the cost of construction. It is also well settled that while assessing the ratable value, if the property is not actually let at any time then Corporation has to take into consideration the hypothetical rent. The Question arises as to when the property is actually leased then whether the rent that is being received by the landlord can be the basis for fixing ratable value. However, it is well settled that the actual rent paid for the property is not conclusive evidence of the value, though such actual rent may serve as an indication as to what a hypothetical tenant can afford to pay. It is well recognized that while determining the ratable value the Corporation has to take into consideration standard rent and for that purpose the provisions of the Rent Act have to be looked into.

7. Bearing in mind the above principles, we have to see the facts and circumstances of the present case, the material on record and find out whether the ratable value fixed by the Corporation was correct or not. It

is needless to say that when Corporation after inspecting the property in question has enhanced the ratable value and while fixing the said ratable value has given sufficient opportunity to the owner to put forward his case then the burden lies on the owner to show that the ratable value fixed by the Corporation is excessive. In the instant case, in order to discharge the said burden, Steel Company has examined their Director Arun Agarwal. Before considering the other evidence in detail, at the outset attention has to be drawn to the statement of said Agarwal. He has stated:-

> ***" Increase in the ratable value was not totally illegal as there was some change of activities in the premises."***
>
> ***Not only that he has in fact stated "the ratable value on the basis of the yearly rent of the entire property would come to Rs.1,04,250/-."***

The Corporation has fixed the ratable value at Rs.1,89,660/-. So, the learned Trial Judge has even totally ignored the admission of Steel Company's director and fixed the ratable value at the rate of Rs.42,605/- i.e. old ratable value fixed by the Corporation when the premises were not leased out to ONGC. So, this itself shows that there was no proper application of mind by the learned Chief Judge, Small Causes Court Bombay while disposing of the Municipal Appeal. In the instant case, admittedly, there is

absolutely nothing on record to show as to on what basis the initial ratable value was fixed. Ofcourse, it has come on record that previously the Corporation had taken into consideration the rate of Rs.15/- per 10 sq.meter when the premises were occupied by the owner. So, merely because previously the Corporation had fixed the ratable value for the entire property at Rs.42,605/-, it can not be said that it was in fact correct or the Corporation was not entitled to enhance the same under any circumstances. It has come on record that Steel Company has leased out two shades and two upper floors to ONGC. Not only that but they have also provided furniture, fixtures and fittings and thus, total area given for the commercial and industrial purpose is 22500 sq.ft. Admittedly, the said area is in heavy industrial zone. Naturally, its intrinsic value is quite high. When the burden was on the Steel Company to show that the ratable value fixed by the Corporation is improper, it was their duty to adduce evidence to show that the other similar establishments in that locality have been leased out at lesser rate and the rent/license fee which the Steel Company is actually recovering from ONGC can not be said to be fair rent or standard rent or it can not be taken into consideration as basis while determining the gross value and the

ratable value of the property in question.

8. We can not ignore the fact that in the instant case property in question has been leased out for the first time in 1981 and that too at the rate of Rs.49,307/- per month. So, the question arises whether that can be said to be the fair rent or hypothetical rent. Firstly, it must be noted that though, ONGC went on paying such rent they did not file any application in the Small Causes Court for fixing the standard rent of the premises in their occupation. So, normally it can be said that since no hypothetical tenant would pay rent higher than such standard rent or fair rent the actual rent would ordinarily be the rent expected from hypothetical tenant. It has been so expressed by the Apex Court in **Motichand Hirachand V/s. BMC (Supra)**. Though in the instant case, there was no change in the main structure, certainly there was change of user. Even the witness of the Steel Company has accepted this position. So, taking into consideration the fact that Steel Company is now actually recovering the amount of Rs.49,307/- per month from ONGC and ONGC had not filed any Standard Rent Application, under the circumstances, Corporation is certainly justified in assessing the ratable value at Rs.1,89,660/-.

9. It is true that ratable value has to be determined on the basis of fair rent alone regardless of the actual rent received but in the instant, the actual rent has to be held to be the fair rent and so, the ratable value fixed on the basis of the fair rent by the Corporation is legal and correct.

10. However, while considering the above observations of the Apex Court, it is also necessary to note the following other observations made by the Apex Court in **Srikant Kashinath Jituri V/s. Corporation of the City of Belgaum (1994)6 SCC page 572**.

> ***"Before parting with this appeal, we feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. Fair rent very often means the rent, prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local bodies to levy and collect the property tax on the basis of fair rent alone, while asking them at the same time to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining and lying roads, drains and other amenities, the salaries of staff and wages of employees in short, all types of expenditure have gone up steeply over the***

> ***last more than, forty years. In such a situation, insistence upon levy of property tax on the basis of fair rent alone disregarding the actual rent received is neither justified nor practicable. Some of the enactments says so expressly. The said principle has been evolved by courts by process of interpretation. Probably a time has come when the said principle may have to be reviewed. In this case, however, this question does not arise at this stage and, therefore it is not necessary to express a final opinion on the said issue."***

11. In this view of the matter, I have no hesitation to hold that the ratable value fixed by the Additional Chief Judge, Small Causes Court, Bombay is totally erroneous and fixed without having regard to the evidence on record, facts and circumstances of the case and the principle of law. It is, therefore, necessary to set aside the said order. Hence, I pass following order :-

O R D E R

Appeal is allowed.

Order passed by the Additional Chief Judge, Small Causes Court, Bombay in Municipal Appeal No.247 of 1985 is set aside. The order of Investigating Officer fixing ratable value at Rs.1,89,660/- is restored.

Under the circumstances of the case, parties to bear their own costs of this appeal.

(S.R. SATHE,J.)